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Hearing Date: December 7, 2000  
At: 10 a.m.

and

Russell R. Johnson III (RJR 1003)  
3734 Byfield Place  
Richmond, Virginia 23233  
(804) 747-7208

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re:

Chapter 11

RANDALL'S ISLAND FAMILY GOLF  
CENTERS, INC., et. al.

Case Nos. 00 B 41065 (SMB)  
through 00 B 41196 (SMB)

Debtors.

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**MOTION OF CERTAIN UTILITIES PURSUANT TO SECTION 366(b)  
OF THE BANKRUPTCY CODE FOR AN ORDER  
MODIFYING ORDER DETERMINING THAT CERTAIN UTILITIES  
ARE ADEQUATELY ASSURED OF PAYMENT**

TO: THE HONORABLE STUART M. BERNSTEIN,  
UNITED STATES BANKRUPTCY JUDGE:

The Consolidated Edison Company of New York, Inc. ("Con.Ed."), Long Island Lighting  
Company, d/b/a LIPA ("LIPA"), KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery  
Long Island ("KeySpan"), Duke Power Company ("Duke"), Baltimore Gas And Electric  
Company ("BGE"), Niagara Mohawk Power Corporation ("NIMO"), Virginia Electric And  
Power Company ("Virginia Power") and Georgia Power Company ("Georgia Power")  
(collectively, the "Utilities"), by counsel, submit their Motion Pursuant To Section 366(b) Of The

Bankruptcy Code For An Order Modifying The Order Determining That Certain Utilities Are Adequately Assured Of Payment (the "Utility Motion"). In support of their Response, the Utilities state as follows:

## FACTS

### Procedural Facts

1. On May 4, 2000, the Debtors each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code with this Court (the "Petition Date").
2. On the Petition Date, on an ex parte basis, the Court entered an Order Pursuant To Sections 105(A) and 366 Of The Bankruptcy Code (A) Deeming Utility Companies Adequately Assured Of Future Performance, and (B) Establishing Procedure For Determining Requests For Additional Adequate Assurances (the "Utility Order").
3. The Utilities objected to the relief provided in the Utility Order and a hearing was held before this Court on July 18, 2000 regarding the Utilities' Objection. At the July 18, 2000 hearing, the Court issued the following ruling with respect to the Utilities:
  - A. The Debtors were not required to tender post-petition deposits to the Utilities;
  - B. The Debtors are to serve counsel for the Utilities with copies of the Debtors' monthly operating statements as they are filed with the Court;
  - C. The Debtors are to serve counsel for the Utilities with a statement from the DIP Lender that sets forth the amount of funds available under the Debtors' post-petition financing facility (the "DIP Facility") by the fifth business day of each month; provided however, that if the Debtors have less than \$10 million in funds available under the DIP Facility, the Debtors shall provide such information on a weekly basis; and

D. If the Debtors default in making timely payment for their post-petition payments, there is a procedure for the Debtors to cure the default within 5 days or be forced to cure the default and pay a deposit on the account.

(collectively, the "Ruling").

4. Although the Debtors have been providing the Monthly Operating Reports as directed by the Ruling, they have failed to timely provide the statements from their DIP Lender (the "DIP Lender Statement") once they fell below the \$10 million availability threshold.

5. On October 3, 2000, Russell R. Johnson III, counsel for the Utilities received the Debtors' Monthly Operating Report for August 2000 and the DIP Lender Statement. The DIP Lender Statement provided that the Debtors' availability under the DIP Facility as of October 2, 2000 was \$10.5 million. Based on the foregoing, Utilities' counsel sent Debtors' counsel a letter dated October 23, 2000 that informed Debtors' counsel that the Ruling required the Debtors to produce the DIP Lender Statement to Utilities' counsel on a weekly basis once the Debtors availability fell below the \$10 million threshold.

6. On November 2, 2000, the Utilities received the Debtors' Monthly Operating Report for September 2000 and the DIP Lender Statement. The DIP Lender Statement indicated that the Debtors fell below the \$10 million availability threshold at some time between October 11, 2000 to October 24, 2000 and that the Debtors availability under the DIP Facility as of October 31, 2000 was approximately \$7.7 million. Based on the foregoing, Utilities' counsel sent Debtors' counsel a letter dated November 2, 2000 asking for the missing statements, comments on the proposed Order for the Ruling and for the weekly DIP Lender Statements. Debtors' counsel has not produced the missing DIP Lender Statements or any other DIP Lender Statements other than

the one that accompanied the August and September 2000 Operating Reports.

#### August and September 2000 Results

7. Since the July 18, 2000 hearing on this matter, the Debtors' operating results for August and September have been as follows:

A. August 2000 - Net loss of \$2.366 million

B. September 2000 - Net loss of \$3.998 million

8. Based on the foregoing losses, the Debtors fell in default under the DIP Facility.

#### Motion To Approve Consulting Agreements and Amendment To DIP Facility

9. On or about November 13, 2000, the Debtors filed a Motion seeking, among other things, authority to approve the retention of consultants to replace the Debtors' Chief Executive Officer, Chairman and Chief Financial Officer and to amend the DIP Facility (the Consultant/Amendment Motion”).

10. In paragraph 11 of the Consultant/Amendment Motion, the Debtors state that:

The Debtors, the Creditors' Committee and the Agent [for the post-petition lenders] each believe that the Debtors' operating performance has not been strong enough and that sufficient progress has not been made in addressing and correcting the Debtors' operational and financial problems. Moreover, the Debtors are concerned about their inability to satisfy the EBITDAR covenant contained in the DIP Facility, and the occurrence of a default under the DIP Facility as a result thereof.

11. With respect to the amendment to the DIP Facility, the DIP Lender appears to have agreed to waive the Debtors' compliance with the EBITDAR covenant based on the Debtors agreement to a covenant based on a weekly budget.

12. On information and belief, on November 21, 2000, the Debtors, in the filing of their third quarter 10-Q report with the Securities and Exchange Commission warned that the Debtors may not have sufficient cash to continue to operate the Debtors' businesses next year and it was unlikely that its stockholders would receive any money from either a reorganization or a liquidation.

#### Adequate Assurance Of Payment Requests

13. The Utilities provide the Debtors with post-petition utility service.

14. The post-petition security that the Utilities are seeking from the Debtors, which are two month deposit requests, are as follows:

- A. Con. Ed. - \$165,875
- B. LIPA/KeySpan - \$210,075
- C. Duke - \$14,975
- D. BGE - \$23,936
- F. NIMO - \$31,820
- G. Virginia Power - \$65,831
- H. Georgia Power - \$11,550

15. In the alternative and in lieu of deposits, the Utilities would also be willing to accept an advance payment arrangement under which the Debtors would tender weekly payments to the Utilities in an amount equal to 1/8 of their two month deposit requests. See *In re Cunha*, 1 B.R. 330, 332-33 (Bankr. E.D. Va. 1979)(requiring Debtor to pay weekly to reduce the utility's exposure). The Utilities would reconcile the foregoing weekly payments against the Debtors' actual usage and either bill the Debtors for any amount used that exceed the weekly payments or

apply the applicable credit to the next month's bill.

16. The Utilities are seeking post-petition security from the Debtors at this time because of the following events that have occurred since the July 18, 2000 hearing on this matter:

A. The Debtors' continued losses in August and September 2000 (It is likely that the Debtors will also incur losses in October 2000, but the Utilities will not have any information on those losses until early December 2000 when the Operating Report for October 2000 is filed);

B. The Debtors' default under the DIP Facility;

C. The uncertainty caused by the replacement of senior management with consultants and the circumstances regarding same; and

D. The potential losses the Utilities will incur based on the fact that they provide the Debtors with service on arrearage basis. In support of the Utility Motion, the Debtors claim that they timely paid their prepetition bills. This, however, is not accurate because the Debtors received late payment notices from the Utilities.

## **DISCUSSION**

### **THE COURT SHOULD MODIFY THE RULING AND ORDER THE DEBTORS TO PAY THE POST-PETITION DEPOSIT REQUESTS OF THE UTILITIES OR APPROVE THE ADVANCE PAYMENT PROPOSAL.**

Section 366(b) of the Bankruptcy Code provides:

Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.  
(emphasis added)

In the Ruling, the Court refused to award the Utilities' the post-petition deposits they were

seeking from these financially and operationally troubled Debtors. During the July 18, 2000, the Debtors testified that they had only used \$1 million of their \$15 million DIP Facility and that they were generally paying their bills. Based on the foregoing, the Court held that an administrative expense priority and the monitoring protections set forth in the Ruling were sufficient to constitute adequate assurance of payment under Section 366 of the Bankruptcy Code at that time.

As mentioned above, since the July 18, 2000 hearing, the Debtors have continued to incur substantial losses. In fact, the Debtors performance has been so poor that the Debtors and their DIP Lenders have moved this Court in the Consultant/Amendment Motion to replace senior management with consultants.

In addition, the Debtors have defaulted on their DIP Facility. Although the Debtors appear to have reached an agreement with the DIP Lender to cure their post-petition default, they have done so by agreeing to be placed under a weekly budget.

Furthermore, despite the Ruling, the Debtors have failed to provide the Utilities with the financial documentation required by this Court. Even though counsel for the Utilities has made repeated demands for the documentation, Debtors' counsel has failed to produce it. Accordingly, even if the financial documentation could provide the Utilities with some protection, it has been obviated in this case as a result of the Debtors' failure to comply with the Court's Ruling.

Finally, if this case were to convert to a case under Chapter 7 of the Bankruptcy Code, the administrative expense claims in the Chapter 7 proceeding will be paid before any of the administrative expense claims in the Chapter 11 proceeding. 11 U.S.C. §726(b). Therefore, based on all of the foregoing, the Utilities do not believe that the protections afforded to them in the Ruling provide them with any substantial protection in this case.

Accordingly, the Utilities are requesting this Court to modify the Ruling and award them post-petition security deposits in the amounts requested herein or approve the advance payment proposal set forth in this Motion.

WHEREFORE, the Utilities respectfully request this Court to modify the Ruling and award the Utilities the post-petition security they have requested from the Debtors or approve the advance payment proposal set forth herein.

The Consolidated Edison Company of New York, Inc.,  
Long Island Lighting Company, d/b/a LIPA,  
KeySpan Gas East Corporation d/b/a KeySpan Energy Delivery Long Island,  
Duke Power Company, Baltimore Gas And Electric Company,  
Niagara Mohawk Power Corporation,  
Virginia Electric And Power Company and  
Georgia Power Company

/s/ Paul B. Phinney III

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and

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(804) 747-7208

### **CERTIFICATE OF SERVICE**

I hereby certify that on this 22nd day of November 2000, I caused a true copy of foregoing Motion to be served, by email and first class mail to: Gerald C. Bender, Esq., Fried, Frank, Harris, Shriver & Jacobson, One New York Plaza, New York, New York 10004, email address: bendege@ffhsj.com, counsel for the Debtors; Edward S. Weisfelner, Esq., Berlack, Israels & Liberman, LLP, 120 West 45th Street, New York, New York 10036, email address: weisfees@berlack.com; and the United States Trustee, Attention: Brian Masumoto, Esq., Office of United States Trustee, 33 Whitehall Street, 21st Floor, New York, New York 10004, telecopy no. (212) 668-2255.

/s/ Paul B. Phinney III

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